REMARKS

Claims 3-27 remain in the application. Claims 1 and 2 have been canceled without prejudice or disclaimer of the subject matter recited therein. Claims 3, 8, 13, and 18 have been amended. New claim 28 has been added.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 1-27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,285,985 to Horstmann ("Horstmann") in view of U.S. Patent No. 5,848,396 to Gerace ("Gerace") in view of U.S. Patent No. 6,757,661 to Blaser et al. ("Blaser").

Embodiments of the present invention concern the sale and presentation of advertising. In the prior art, there are two standard practices for the selling and buying of advertising space. The first is cost per thousand (CPM) in which publishers sell advertisers access to their aggregated audience and the second is cost per action (CPA) in which advertisers pay publishers only when a defined action occurs in response to their advertising message (e.g., "clicking on the advertisement). The Internet has helped catapult the latter as an integral and inherent part of advertising agreements struck today between publishers and advertisers. However, this CPA method in its current form, is disrupting the advertising industry's commitment to creatively and responsibly educate consumers on what is available for consumption.

Performance-based methods like CPA induce advertisers to have less vested in the quality of their creative message because they essentially pay only when their ad works. Additionally, publishers have less vested in the integrity of their relationship with their audience because they are monetarily rewarded based on their readers' reaction to advertising as opposed to the access to reach them. As a result, consumers are experiencing a dearth of creatively entertaining advertising and an evaporating trust with content publishers.

Embodiments of the present invention address the problems of the prior art CPM and CPA methods by offering the incentive of excess inventory to the business practice of selling and buying advertising space. These embodiments can result in empowering consumers to influence the quality of the creative advertising messages to which they give their attention.

Independent claims 3, 8, 13, and 18 have been amended to bring out this feature. For example, claim 3 has been amended to refer to a method for the sale of advertising where the seller and buyer agree to a sale price for the exposure of an advertising message and potential, to be earned bonus exposure of the advertising message on the website. A level of earned bonus exposure is determined based on actions made by one or more viewers in response to the original exposure of the advertising message. The level of bonus exposure is then provided on the website. Likewise, claim 8 has been amended to refer to the sale of a number of impressions of an advertising message and potential, to be earned bonus impressions of the advertising message on the website. Again, the number of earned bonus impressions is determined based on actions made by one or more viewers in response to the original exposure of the advertising message. The number of earned bonus impressions is then provided on the website. Independent claims 13 and 18 have been similarly amended. These features are neither shown nor suggested by the cited references.

Horstmann refers to a system for providing advertisements to a user of a software program (e.g., to pay for use of the program). As the user interacts with the program (e.g., a financial software program), advertisements are displayed to the user in series. The user must be "on-line" so that advertisements can be downloaded from a central location (see, e.g., Fig. 5). Unlike the claimed invention, Horstmann does not refer at all to the providing of advertising on a website and the providing of bonus exposure on the website. In particular, Hortsmann refers to the CPM and CPA methods referred to above and in the Background section of the present application. As seen at Col. 4, lines 6-9, the buyer pays for each time his/her advertisement is shown to the user, or alternatively each time the user clicks on an advertisement (Col. 4, lines 23-

26). Accordingly, Horstman fails to teach a buyer and seller agreeing to a sale price to cover exposure of an advertising message and potential, to be earned bonus exposure, where a level of bonus exposure is determined based on actions made by one or more viewers in response to the advertising message on the website.

Gerace and Blaser fail to make up for the deficiencies of Horstmann.

Gerace refers to a method and apparatus for determining a behavioral profile of a computer user. An advertisement module 75 is provided that customizes the display of advertisements to a user based on the user's psychographic profile. Thus, features of advertisements, such as color, motion, and orientation can be matched to users who respond to such features (see Col. 5, lines 15-25). Gerace specifically discusses the pricing and sale of advertising exposure. At Col. 12, lines 7-22, pricing is based on the number of times that an advertisement is presented for viewing by a user ("hits" as in the CPM method) or alternatively, it is based on the number of times a user selects an advertisement ("click throughs" as in the CPA method)(see also, Col. 15, lines 22-24, which states that the buyer has paid for a set number of "hits" or "click-throughs"). Accordingly, in the CPM model, a buyer may purchase 100,000 hits. The method and apparatus of Gerace chooses the users for display of the advertisement based on the psychographic profile, and provides 10,000 of the total number of purchased hits. The program then runs a regression analysis to see who the advertisement appeals to the most. Then Gerace will show another 10,000 of the total number of purchase hits to what is hopefully a better, more-targeted audience. As stated in Gerace, the regression analysis is repeated every 10,000 hits. Nowhere in Gerace is it suggested that the buyer of advertisement exposure will earn bonus exposure (e.g., more hits) based on user actions taken in response to the advertisement. It is clear from Gerace, that a buyer purchases a set number of hits, and the system tries to provide more of those purchased hits to users who will respond to them as desired.

Blaser relates to the selection of advertisements to be displayed to users who are accessing the internet through a different program. This is similar to the system of Horstman, where a user is provided with a financial software program, and the user pays for such by being exposed to advertisements. In Blaser, a user accesses the Internet through a browser program and in a separate window, advertisements are displayed (e.g., to reduce the amount paid for Internet access). Blaser seeks to improve the display of advertisement to the user (e.g., "[i]f the advertisement is receiving good response from users of a given demographic category, then the ad server automatically causes the advertisement to be displayed to users of a similar demographic category," Col. 3, lines 52-56). Also, advertisements that are doing poorly can be increased in rotation (i.e., more frequent displays) to generate more user interest. As with Horstmann and Gerace, Blaser follows the CPM method for displaying advertisements (see Col. 3, lines 19-21 and Col. 6, lines 59-60). Though Blaser discusses increasing rotation of an advertisement, there is nothing in this reference to suggest that a buyer will earn additional impressions of an advertisement over and above the total number of impressions originally paid for. Moreover, each of the pending claims refers to providing exposure of an advertising message on a website, determining a level of bonus exposure of the advertising message based on viewer actions in response to the advertising message, and providing the level of bonus exposure on the website. In Blaser, advertisements are not displayed on website. As discussed at Col. 6, line 66 to Col. 7, line 19, advertisements are displayed by the client application separate from the browser window that is used to display Internet websites to the users.

As seen from above, each of the cited references operate within the confines of the CPM and CPA methods. One embodiment of the present invention refers to IPC or "impressions per click." IPC, where bonus exposure is earned based on performance of an advertising message, meets the needs of publishers to secure a fixed fee for accessing their audience while providing a performance metric that meets the needs of advertisers to increase the value of their investment. Also, such a system may encourage the advertising industry to maintain its commitment to

consider the needs of consumers first, over the needs of those who commercially benefit from their attention.

Since features of each of the pending claims are neither shown nor suggested by the Horstmann, Gerace or Blaser references, reconsideration and withdrawal of the rejection of claims 3-27 under 35 U.S.C. § 103(a) is respectfully requested.

CONCLUSION

For all the above reasons, the Applicant respectfully submits that this application is in condition for allowance. A Notice of Allowance is earnestly solicited.

The Examiner is invited to contact the undersigned at (202) 220-4255 to discuss any matter concerning this application. The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,
KENYON & KENYON

Dated: 8/4/05

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